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PEPS

76-761

30 MAR 1976

MEMORANDUM FOR: Director, Equal Employment Opportunity

FROM : F. W. M. Jarney
Director of Personnel

SUBJECT : Civil Service Commission's Proposed Revisions
to Part 713

REFERENCE : Memo for D/Pers fr D/EEO dtd 10 Mar 76, same subj.

1. The proposed revisions to FPM 713 forwarded with your memorandum have been reviewed for their impact on the Agency. We find one major change and several minor ones from the procedures being used in the present system for processing the individual EEO complaint. We do not believe there is any problem in the minor revisions such as changing from 30 to 120 days the amount of time that may elapse between the act of discrimination and the filing of a complaint. Section 713.605 of the revisions, however, does raise serious concern.

2. Proposed Section 713.605 would not permit the Agency to counsel nor investigate any class action complaints. When a class case is received it would go immediately to the Commission where a complaints examiner would be appointed to investigate and determine the merits. The section does not say that the complaints examiner could not be an employee of the Agency concerned, but the implication is that he or she would not and there is clearly no statement that the examiner shall be an employee of the Agency concerned. Requiring CSC's participation in a case from the beginning without restraints could easily bring this proposed rule into conflict with Section 6 of the CIA Act of 1949 which charges the DCI with the responsibility of protecting sources and methods and exempts the Agency from the "provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency." The provisions of the CIA Act have been accommodated in the CSC processing of the individual EEO case by allowing Agency involvement from the beginning. We believe the procedures for class actions provided for in the proposed rule for FPM Section 713 would pose very serious problems. Even a class with

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a minimum number of a self-contained unit of overt employees dealing with overt material could run dangerously close to conflict with the rules which govern CIA security concerns. The possibility of a class action without security aspects is very remote and the risk too great to permit direct Civil Service involvement without the opportunity for prior Agency review and appropriate action to protect sensitive or security factors.

3. We recommend the Commission be asked to exempt CIA from the provisions of Section 713.605, as they are presently stated. The reasons for the exemption are based totally on security factors. The Agency should commit itself to adhering to the spirit of the law but with all processing done internally up to the point that the class agent appeals the case to the Commission, at which time the Commission would become involved in the same manner as it does now in individual cases.

(Signed) F. W. M. Janney

F. W. M. Janney

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